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**Evidence.**—On appeal, the evidence demurred to must be considered most favorably to the party offering it.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3748; Dec. Dig. § 927 (5).\* 1 Va.-W. Va. Enc. Dig. 576.]

**4. Insurance (§ 146 (3)\*)—Contracts—Construction.**—Contracts of insurance are to be considered most strongly against insurer, and in favor of the assured.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 295; Dec. Dig. § 146 (3).\* 7 Va.-W. Va. Enc. Dig. 784.]

**5. Insurance (§ 646 (6)\*)—Accidental Insurance—Action on Policy—Burden of Proof.**—In an action to recover upon a policy of accident insurance, covering "bodily injury, effected directly and independently of all other causes through accidental means," the plaintiff has the burden of bringing himself within its provisions by proving an accidental injury to the assured.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1659-1662, 1664; Dec. Dig. § 646 (6).\* 7 Va.-W. Va. Enc. Dig. 815.]

**6. Insurance (§ 646 (6)\*)—Accidents—Presumption—Death—Natural Causes.**—Death is to be presumed to be the result of natural dissolution rather than of accidental injury.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1659-1662, 1664; Dec. Dig. § 646 (6).\* 16 Va.-W. Va. Enc. Dig. 1068.]

Error to Law and Chancery Court of City of Norfolk.

Action by Jenny W. Murray against the General Accident Fire & Life Assurance Corporation, Limited. Judgment for plaintiff, and defendant brings error. Reversed, and judgment entered for the defendant.

*R. R. Hicks*, of Norfolk, for plaintiff in error.

*E. R. F. Wells*, of Norfolk, for defendant in error.

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BASHFORD *v.* ROSENBAUM HARDWARE CO.

Nov. 16, 1916.

[90 S. E. 625.]

**1. Municipal Corporations (§ 819 (4)\*)—Evidence—Injury to Pedestrian.**—In an action for personal injuries sustained by a pedestrian in falling into an opening in a sidewalk, usually covered by doors, evidence held to support findings that the doors were not open when plaintiff approached; that he was not aware that one door had been opened behind him while his attention was elsewhere by a boy in the employ of the defendants and engaged in their work.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 1739; Dec. Dig. § 819 (4).\* 12 Va.-W. Va. Enc. Dig. 927.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**2. Negligence (§ 136 (10)\*)—Trial—Question for Jury.**—The general doctrine is that whether one has been guilty of negligence or not is a mixed question of law or fact, to be decided by the court when the facts are undisputed or conclusively proved, but not to be withdrawn from the jury when the facts are disputed or evidence is conflicting.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 298-300; Dec. Dig. § 136 (10).\* 16 Va.-W. Va. Enc. Dig. 999.]

**3. Municipal Corporations (§ 806 (2), 821 (25)\*)—Pedestrians—Care Required.**—A pedestrian has the right, in the absence of knowledge to the contrary, to assume that a sidewalk is in a reasonably safe condition for travel, and is not, as a matter of law, required to be on the lookout for defects, but is required to exercise ordinary care.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 1678, 1756; Dec. Dig. § 806 (2), 821 (25).\* 12 Va.-W. Va. Enc. Dig. 908.]

**4. Appeal and Error (§ 999 (3)\*)—Review—Findings of Jury.**—The finding of a jury on the question of contributory negligence will not be disturbed where the evidence is such that reasonable men might fairly differ on such issue.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3923, 3924; Dec. Dig. § 999 (3).\* 1 Va.-W. Va. Enc. Dig. 617.]

**5. New Trial (§ 72\*)—Evidence—Sufficiency—Contributory Negligence.**—In an action for personal injuries sustained by a pedestrian in falling into an opening in a sidewalk, a verdict acquitting plaintiff of contributory negligence held not so plainly against the evidence as to justify the court in setting it aside and granting a new trial.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 146-148; Dec. Dig. § 72.\* 10 Va.-W. Va. Enc. Dig. 464.]

Error to Circuit Court of City of Newport News.

Action by Frank Bashford against the Roenbaum Hardware Company, a partnership. Judgment for defendants, and plaintiff brings error. Reversed.

*T. J. Christian* and *J. Winston Read*, both of Newport News, for plaintiff in error.

*Charles C. Berkeley*, of Newport News, and *Wm. A. Graff*, of Norfolk, for defendants in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.